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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1530)

[*Translation*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everyone.

[*English*]

Welcome to meeting 126 of the Standing Committee on Industry, Science and Technology as we continue our statutory review of the Copyright Act.

Before we get into it, we just have a couple of minutes of House duty. I'd like to officially welcome Celina Caesar-Chavannes.

Welcome. You are officially a member.

Some hon. members: Hear, hear!

The Chair: On this side, both Michael Chong and Dan Albas are official members, too.

Welcome. Congratulations.

As such, we need to elect a vice-chair.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Mr. Chair, I nominate Mr. Albas as vice-chair of this committee.

The Chair: Are there any more nominations from the floor?

I declare Mr. Dan Albas acclaimed as the first vice-chair.

Some hon. members: Hear, hear!

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you, Mr. Chair.

The Chair: Now that we have that out of the way, we have with us today some really interesting witnesses. From the Professional Music Publishers Association, we have Jérôme Payette, executive director. From the Canadian Network Operators Consortium, we have Christian S. Tacit, barrister and solicitor, and Christopher Copeland, counsel. From the Société des auteurs de radio, télévision et cinéma, we have Mathieu Plante, president, and Stéphanie Hénault, executive director, and, finally, from the Movie Theatre Association of Canada, we have Michael Paris, director, legal and chief privacy officer.

Each group will have up to seven minutes to make their presentation, and after that we'll go into our rounds of questions.

We're going to start off with the Professional Music Publishers Association.

[*Translation*]

Mr. Payette, you have the floor for seven minutes.

Mr. Jérôme Payette (Executive Director, Professional Music Publishers' Association): Mr. Chair and members of the committee, I am very pleased to appear before you today on this major review of the Copyright Act.

The Professional Music Publishers' Association (APEM) represents francophone and Quebec music publishers in Canada. Our members run 830 publishing houses featuring 400,000 musical works.

Partnering with songwriters, music publishers support the creation of musical works, and promote and manage them. Typically, a music publishing house works with a number of songwriters to create new works and represents catalogues of existing songs. Publishers are in a way the agents of songwriters and their works. They are the professionals in copyright management.

I would like to point out that the APEM is a member of the Canadian Music Policy Coalition, which produced a 34-page document, of which you have certainly received a copy. Virtually the entire music industry supports this document.

APEM has nevertheless targeted a few points to discuss with you today.

Right away, I will tackle point 1, which proposes to amend the provisions on network services, which indiscriminately apply to a wide range of companies.

Section 31.1 of the Copyright Act is, in a way, the Canadian exemption rule. The text under "Network Services" allows a provider of "services related to the operation of the Internet" who "provides any means for the telecommunication or the reproduction" of protected content to not be held liable for infringing copyright and for not paying rights holders.

Based on how the act is drafted right now, companies providing services as diverse as Internet access, cloud storage, search engines or sharing platforms such as YouTube, Facebook or Instagram indiscriminately benefit from the exception on network services. However, those companies provide very different services: an Internet service provider provides an Internet connection; a storage service stores files and makes them available for private usage; a search engine classifies results according to keywords; sharing services such as YouTube make content available to millions of users, develop recommendation algorithms, promote, organize content, sell advertising and collect user data.

The development of the Internet may have been difficult to predict, but today we know that not all those companies provide the same services. The Copyright Act must now consider those companies' spectrum of activities and ensure that their responsibilities are not automatically the same.

Let me clarify. I think that all those companies should remunerate the rights holders, because they use copyrighted content for commercial purposes. However, Internet service providers may have different responsibilities than YouTube, for example. Internet service providers should remunerate rights holders and be more active in the fight against piracy, whereas sharing services should be required to obtain proper licences for the entire repertoire they make available.

Last week, on September 12, the European Parliament adopted a copyright directive to that effect. The directive establishes that online content sharing service providers such as YouTube must make a statement to the public and enter into fair and appropriate licencing agreements with rights holders, even for online user content.

In addition, sharing services will need to be more transparent about how they use content. As a result, users will be able to continue to put content online, but sharing services will have to sign agreements with copyright collective societies, pay for the use of the content and be transparent. I think Canada should draw inspiration from this European approach.

I will close the first point by talking about NAFTA.

We know that the U.S., at the request of major tech companies, is pushing for the intellectual property chapter to include exemption rules based on its Digital Millennium Copyright Act. If Canada were to accept this request, it would be very difficult, if not impossible, to change its own legislation to reflect today's reality.

The second point I want to address is the need to make the private copying system technologically neutral and to set up a transition fund.

Annual revenue from private copying royalties paid to music creators has gone down by 89%, from $38 million in 2004 to less than $3 million in 2016. As economist Marcel Boyer said, it is "the theft of the century", and just because it's been going on for years doesn't make it acceptable.

The spirit of the 1997 Canadian legislation is no longer upheld, simply because of technological change. The current review of the Copyright Act should be used to make the private copying system technologically neutral and thereby allow royalties to be paid for a variety of devices, including tablets and smartphones. The levy would be charged to the manufacturers and importers of devices.

● (1535)

In Europe, the average fee is $2.80 per smartphone. It would be very surprising if the average price of an iPhone X were to increase from $1,529 to $1,532 if a private copying levy is introduced. That cost would not be passed on to the consumer.

Finally, the drastic drop in private copying revenue requires a $40-million transition fund, as requested by the Canadian Private Copying Collective. The Liberals have agreed, and it is high time the fund became a reality.

The third point proposes to extend the duration of copyright protection to life plus 70 years after the author's death. In the vast majority of OECD countries, the protection lasts for 70 years, whereas in Canada, it is only 50 years after the author's death.

Canadian rights holders are at a disadvantage in terms of exports, since their works are subject to less international protection. Canadian laws should not prevent showcasing our works and creators internationally.

For the music publishers I represent, extending the term to 70 years after the author's death means more revenue to be invested in the career development of Canada's authors and composers of today.

The fourth point is about clarifying and eliminating exceptions. The number and nature of the exceptions under the Copyright Act deprive rights holders of revenue they should normally receive. Today, I don't have time to present all the exceptions that should be amended in the Copyright Act. A document from the Canadian Music Policy Coalition goes over the exceptions in detail.

I will close with a fifth point, which is the importance of having a functional copyright board.

I am well aware that work is under way to reform the Copyright Board of Canada. I applaud that, I think it is great news. I would simply like to emphasize the importance of this reform for implementing the Copyright Act.

Right now, the board takes a long time to make decisions, which does not work in today's environment. Uncertainty about the value of copyright affects publishers, songwriters and all music industry stakeholders.

Thank you.

● (1540)

The Chair: Thank you very much.

[English]

We're going to jump to the Canadian Network Operators Consortium.

Mr. Tacit, you have up to seven minutes.

Mr. Christian Tacit (Barrister and Solicitor, Counsel, Canadian Network Operators Consortium Inc.): Mr. Chair and committee members, CNOC is a not-for-profit industry association comprised of over 30 small, medium and large-sized competitive ISPs.

At the outset I want to stress that CNOC takes copyright infringement very seriously. In fact, a number of its members are now either licensed or exempt BDUs. Our core message is that the notice and notice regime continues to strike a reasonable balance between the rights of content owners and Internet users for addressing allegations of online copyright infringement and achieving related educational objectives.

However, based on CNOC member experiences, the regime does need some tweaking. More specifically, CNOC makes the following recommendations.

First, the legislation should require content owners to send notices that only contain the elements prescribed by statute. This will prevent abuse by parties who use such notices to transmit settlement demands, advertisements or other extraneous content.

Second, there should be a requirement for notices to be provided simultaneously in both text and machine-readable code. This will facilitate the choice of manual or automated processing of notices by ISPs, depending on the scale of their operations.

Third, content owners should be required to send notices exclusively to the publicly searchable abuse email addresses that ISPs register with the American Registry for Internet Numbers. This will ensure that notices are directed to the correct email addresses that ISPs wish to use for processing notices.

Fourth, the number of notices that a rights holder can send to an ISP for an alleged infringement of a work associated with a specific IP address should be limited to no more than one notice per specified period of time, for example, 48 hours. This will prevent ISPs from being deluged with multiple notices directed at the same IP addresses for the same infringement.

I will now discuss why the kind of approach advocated by the FairPlay Canada coalition, which we'll call "the coalition" in this submission, and other more severe measures, should be rejected. Our analysis is based on a proportionality framework that includes consideration of the following matters: defining the scope of the problem, assessing the benefits and costs of the proposed remedy, and fairness.

The coalition members, which include the largest vertically integrated ISPs and content providers in Canada, have spared no expense to commission and find private studies promoting the view that the financial impact of copyright infringement on content owners is so devastating that the remedy the coalition is promoting is necessary. No other entity has the resources to respond fully to all of the coalition's submissions. Fortunately, they don't have to. In the CRTC proceeding assessing the application brought by the coalition last year seeking to implement its administrative content blocking regime, intervenors such as Canadian media concentration research project, or CMCRP, and Public Interest Advocacy Centre used publicly available data to demonstrate that the scope of online copyright infringement and its impact on content owners is not nearly as alarming as the coalition would have us believe. It follows that the adoption of the coalition's proposed regime is not necessary.

Turning to the issue of benefits, there is no point in instituting the kind of regime advocated by the coalition if it is largely ineffective. IP address blocking, domain name server or DNS blocking, and the use of deep packet inspection, or DPI, to block traffic can all be circumvented by various technical means, including virtual private networks, or VPNs. In addition, blocking techniques can end up blocking non-infringing websites at the same time that they block infringing ones.

When it comes to costs, there are both public and private ones. The private costs are those borne by parties such as ISPs to comply with the regime, and the risks of litigation they bear if non-infringing content is unavoidably blocked as a result of how blocking technology works. Public costs include the additional costs of instituting and maintaining the administrative regime, as well as the erosion of legal and democratic values such as freedom of expression, privacy of communications, and avoidance of unnecessary surveillance, which are currently enshrined in common carriage and net neutrality principles.

● (1545)

In this regard, we caution against the slippery slope of requests made by coalition members and others. At first, most of the large, vertically integrated ISPs and content providers supported notice and notice. Then they embraced the coalition. Perhaps they will now argue like MPA, that injunctions should be available against ISPs for content blocking, and ISP safe harbours should be reduced. Then they might argue that the only way of preventing the circumvention of blocking is to outlaw VPNs altogether, which are used routinely to protect the privacy and security of data and to facilitate freedom of expression.

Content owners might even go further and argue for a notice and take down regime, without any court or administrative supervision.

The costs of all of these alternatives are much too high for Canadians to bear, and there is no need for any of this. The Copyright Act already provides a mechanism for content owners to seek injunctions for the removal of infringing content. The test of what is reasonable in a free and democratic society can be gleaned from a CMCRP analysis of 40 OECD and EU countries. Eighteen of them rarely engage in website blocking, 18 others block websites by court order, and only four block websites by way of administrative procedures.

If, despite these submissions, Parliament does adopt the type of remedy proposed by the coalition, then fairness requires that it also allow ISPs the right to recover their costs of implementing and administering blocking mechanisms. These costs can be significant and can even put small ISPs out of business if the costs are not recovered.

However, we urge this committee to recommend to Parliament the retention of the existing notice and notice regime with the minor modifications we have proposed. Other, more stringent measures should be rejected.

Thank you.

The Chair: Thank you very much.

We're going to move to the Movie Theatre Association of Canada with Mr. Michael Paris.

You have up to seven minutes.

Mr. Michael Paris (Director, Legal and Chief Privacy Officer, Movie Theatre Association of Canada): Thank you very much, Mr. Chair.

Good afternoon, Mr. Chair and honourable members.

I'm here on behalf of the Movie Theatre Association of Canada, which I might interchangeably refer to as MTAC for short today. We are the trade organization representing the interests of film exhibitors behind more than 3,000 movie screens across Canada. We are exactly what the name suggests. Our members sell the tickets, sell the popcorn and ensure that films are presented the way that creators intended—on the big screen.

Among other things, MTAC represents exhibitors in negotiations with collective societies and otherwise intervenes in proceedings such as this one. Having said that, we are not frequent flyers or by any means regular visitors to copyright proceedings, so we do thank you for the invitation. We're not a collective or an institution that is regularly involved in the business of copyright, although it certainly affects our members and we do pay tariffs to certain collectives.

I'm going to tell you some quick things that you may not know about exhibitors. The first is that exhibitors in fact rent their films from distributors, and we keep less than 50% of every ticket our members sell. They don't control the film product they show, so if you are tired of sequels, you should take that up with the producers.

As a sector of the film industry, exhibition is more than 80% Canadian owned and operated, and it includes hundreds of mom-and-pop locations in places big and small. We also employ thousands of Canadians, and we're a leading first-time employer.

We are also an industry that is experiencing a great deal of disruption. As Telefilm noted in a recent study, while theatres still attract two-thirds of Canadians from time to time, Canadians are increasingly turning to streaming options. Exhibitors are competing with a universe of entertainment options like never before.

Having said all that, MTAC has been historically involved in one single issue that has been raised before this committee, and that concerns the proposal from some of the music industry to amend the definition of sound recording in the act. This is the only issue I'll speak to this afternoon, and I'll keep it very brief.

In this review of the act, a group of stakeholders led by multinational record labels and Canadian affiliates have expended considerable resources to promote the idea of a gap in the business of copyright. This group suggests bleak prospects for creators and depicts a diminishing future where technology causes them to fall further behind if their demands aren't met with legislative amendments.

With respect to this amendment, they're proposing to amend the definition of sound recording in the act to remove the exception that exists for film soundtracks where they accompany a cinematographic work. I'm just going to say "film" from now on, if that's okay. The sole purpose of this amendment is to unlock a stream of royalties from the exhibitors that would provide this constituency with a share of box office revenue.

MTAC believes the current definition of sound recording in the act strikes the appropriate balance between creators, rights holders and exhibitors. The amendment proposed by some of the music industry will aggravate the ongoing forces of technological disruption that affect exhibitors and risks further destabilizing the role of cinema as the primary showcase for Canadian creators within the domestic and global film industry.

The proposal also isn't new. From 2009 to 2012, MTAC successfully responded to legal proceedings initiated by some in the music industry. In those proceedings, they argued that the current definition of sound recording should not be interpreted to contain the exemption for soundtracks that it obviously does contain. It wasn't until the Supreme Court of Canada weighed in in 2012 that this issue was put to rest.

Contrary to the repeated refrain from some, the definition of sound recording is not arbitrary. It's not inequitable or unjustified. As the courts found, it was quite intentional and reflects a balance struck between creators, copyright owners and exhibitors as drafted by thoughtful legislators.

These stakeholders are now asking this committee to pick up the pen where their litigation left off. However, the same problems identified by the courts continue to apply to this proposed amendment.

The first thing I would say is that this amendment is not as simple as they suggest. It will require a significant rewriting of the act to eliminate absurdities identified by the courts in their decisions and other inequities that this amendment would create. I don't have time to go through everything, but I will identify what I think is the most objectionable, and that is that this amendment would create a system of double-dipping where creators and copyright owners are paid on the front end for the inclusion of their work in a film and then also on the back end when the film is played. This is exactly why the exemption was instituted, and it's consistent with how the work of other creators is treated in the act when their work is incorporated into a film.

● (1550)

It was never a subsidy. Neighbouring rights compensate for uncontrolled usage of sound recordings that can arise without the record label's involvement. However, the right to exploit music in a film is a right for which a licence is required, and for which compensation has already been provided by the filmmakers. That compensation is expressly agreed upon in a contract. The inclusion rights are negotiated directly with the copyright owner and acquired on a worldwide basis to facilitate the global distribution and exhibition rights for the film as a singular unit, not as a collection of works.

This distribution model is critical to the global box office returns, which in turn pay the costs of the filmmaker, including payment to music industry stakeholders.

That's about as far as I can go in the short time provided here today. We will be making a more detailed brief available to the committee later this week on behalf of our members. Thank you for the invitation and your time today. I am pleased to respond to any questions.

The Chair: Thank you very much.

[*Translation*]

For the last presentation, we have the Société des auteurs de radio, télévision et cinéma.

The floor goes to Stéphanie Hénault and Mathieu Plante.

Ms. Stéphanie Hénault (Executive Director, Société des auteurs de radio, télévision et cinéma): Thank you for inviting us to appear today.

We would like to talk to you about the work of authors, such as screenwriters, and how the Copyright Act could enrich Canadian culture and economy in the long term.

First of all, let me tell you about our organization, SARTEC. Its mission is to protect and defend the professional, economic and moral interests of all self-employed French-speaking authors in the audiovisual sector in Canada. It negotiates collective agreements with producers, advises authors on their contracts, collects royalties on their behalf, and helps ensure that their work is valued.

Our collective agreements prohibit the assignment of rights, but they grant producers operating licences for the text in the form of audiovisual works, they regulate the possibility of granting licences for other purposes, and they allow authors to collect royalties from producers or collecting societies, depending on the type of operation. All this is set out in the agreements.

Screenwriters are creators who devote their lives to writing and imagining the stories of Canadian heroes and values. Their scripts are the source of audiovisual works that bring people together, move them, make them laugh and reflect, promote our culture, our country and its great wealth. The benefits they generate are very positive for the economy and the well-being of Canadians. To ensure that our Canadian audiovisual production is competitive, we have a responsibility to put in place modern mechanisms in the act to ensure that creators are adequately compensated for the fruits of their labour.

It is important to remember that, in order to do their jobs, authors must be able to grant the rights for their work in return for remuneration, whether for a film, to a theatre company for a play or to a publisher in the case of a book. Authors must have the ability to monetize the rights for the adaptation of their screenplays and to reap the benefits. Self-employed workers often assume the risk of creating their work alone. The act must therefore allow them to mitigate that risk, so that they can continue to create and make a decent income in the digital economy.

In our opinion, the act must allow our children who have the desire and talent to dream of working as creators one day too.

● (1555)

Mr. Mathieu Plante (President, Société des auteurs de radio, télévision et cinéma): To do so, we are basically asking for five things. Today, the time we have forces us to present only three of them to you.

First, we call for the elimination of the unfair exceptions introduced in 2012 in the Copyright Act, which adversely affect Canadian creators. We continue to strongly denounce those exceptions. They actually compromise the ability of our writers to continue to write our stories, but Canada must ensure that they continue to do so.

Second, we ask that the private copying system be extended to audiovisual works. Canadian audiovisual creators and producers have been left out of this system, which works well in most European countries and elsewhere.

Third, we ask that a presumption of copyright co-ownership for audiovisual work be added. In accordance with Canadian case law, the act should specify that the writer and director are presumed to be copyright co-owners of the audiovisual work. The screenwriters write the text, a literary work that will guide all subsequent contributors to the audiovisual work. For their part, the directors will make creative choices to turn the text into an audiovisual work, choices that will influence the costs finances.

The script defines the film to be made as concretely as possible. By writing it, writers create the story. They describe the characters, their intentions, behaviours, dialogues and evolution. They set out the film to be made scene by scene, including its setting, time and sound environment. For their part, the directors direct the performers, designers and technicians to ensure that the screenwriter's work takes on an audiovisual form. The director's choices will influence the style, rhythm, tone and sound of the film.

We therefore invite you to acknowledge that the author of the script, the adaptation and the spoken text, as well as the director are presumed to be the copyright co-owners for the audiovisual work. We would have no objection to also taking into account the composer of any music specifically created for the work.

Finally, we are asking that the act be modernized so that the protection it grants to works is extended from 50 years to 70 years after the author's death and so that it better complies with intellectual property in the case of audiovisual works that are digitized and distributed on digital platforms. A more explicit brief on this issue will be subsequently sent to you.

● (1600)

Ms. Stéphanie Hénault: Before I conclude, I would like to remind you of the primary purpose of the Copyright Act, which is to protect the intellectual property of creators to ensure that they are paid for the use of their work.

We feel that it is your duty to encourage their long-term ability to continue to bring people together, entertain them, move them, make them laugh or reflect, promote our country and our values, and contribute to our pride. To do so, we believe that some of the provisions of the act need to be updated to bring it in line with international best practices that connect creators with the economic benefits of their works.

Thank you.

The Chair: Thank you very much for all your presentations.

We will start the period for questions.

[*English*]

We're going to go right to Mr. Longfield.

You have seven minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Mr. Chair.

Thank you all for the concise presentations that you have prepared and delivered for us. We're here to try to find the right path forward, and your presentations are helping.

I have a few questions, starting with Mr. Payette.

You mentioned changing the Copyright Board. I met with a group of musicians in Guelph recently who talked about the Copyright Board as well. One of their points was that there should be musicians on the Copyright Board.

Would you have any opinions on who makes up the Copyright Board? Should we include musicians, publishers and the range of stakeholders?

Mr. Jérôme Payette: I'm not very familiar with the Copyright Board's procedures, because mostly it's the collective administration societies that go in front of the Copyright Board. To my understanding it's mostly like a tribunal that sets the rates, so it's very technical.

I'm not sure that musicians should be on the board, but of course people who are willing to recognize the value of the music created should be.

Mr. Lloyd Longfield: Okay. Thanks. I was just wondering how deep the comment went.

Also, staying with you on the share that a performer typically receives in a live performance versus a recorded and published performance, do you have a sense of what kind of gap there is? Some of the musicians have said that the way to get paid now is to be live, and that payments from streaming services or publishers have dropped so drastically that they've had to really rethink the way they go to market with their product.

Mr. Jérôme Payette: There are different types of professionals in the music industry. You can be a songwriter that does not necessarily perform, but in the case of a singer-songwriter who's also a performer, yes, performing has become important to make a living.

Concerning mostly streaming services, I was suggesting that we might look at what the European Parliament just did last week and try to get more money from the services. I think that's very important. They said that the sharing services, for example, like YouTube, will have to pay for all the streams. Right now, that's not the case. They only pay for the streams that are being commercialized. If a user puts something online, like on YouTube, for example, there's no money coming out right now. However, if we follow what they're doing in Europe, there would be money coming to the rights holders following.... I think they call it the "communication to the public" in Europe.

Mr. Lloyd Longfield: That's great. That's helpful. When we consider our trade agreements with Europe, with intellectual property agreements being part of that, and how we go to market in North America versus Europe, we can see that there could be an influence from the European decision. However, it's a recent decision, so we haven't quite got into it but it's really good to hear your first take on it.

Mr. Jérôme Payette: I think it's a very good example to follow and gives good balance to the rights holders, ahead of big international companies. They don't always have licences and they don't always pay for the music that's being used.

Mr. Lloyd Longfield: Thanks.

You just alluded to another issue that I was thinking of, which is the difference between a songwriter and a performer. When you think of Aretha Franklin performing Otis Redding's *Respect*, she didn't get paid for that. She took the meaning of the piece and she turned it on end. Instead of a man coming home and being respected by the woman, she turned it around and really changed the meaning of the song in the way that she performed it, but she really didn't get paid for that, in terms of the revenue stream.

Regarding the stream between performers and writers, is that something that has changed over the years? Is that something that we need to be looking at, in terms of legislation?

● (1605)

Mr. Jérôme Payette: I'm not familiar with the example. I know who Aretha Franklin is and I know the song. I think there's copyright on the song, but there's also remuneration coming out of the recording of the song. I think she probably made money with the recording of the song. I'm not familiar with that case, but there is remuneration for performers. I think it's normal that writers get paid as well. The people who write the songs are very important.

Mr. Lloyd Longfield: Yes. I guess that it's in terms of the interpretation of the song, but thank you for that. It was quite the tragic story, when we lost her this summer.

If I could pivot over to Mathieu and Stéphanie to look at how a Canadian author makes a living in 2018 and the emerging trends on authorship. There was a connection I could see between the Movie Theatre Association of Canada and the payment of music creators and music performers versus the authors who get paid for writing screenplays and scripts. Is there a difference there that you know of? Are they paid about the same or in the same types of ways?

I could maybe follow up through Michael Paris to see whether there's agreement or whether there's knowledge you can share on that.

[*Translation*]

Ms. Stéphanie Hénault: We have not talked about that. That being said, the role of the scriptwriter is more important than that of the music composer.

You want to know if we support the demand for additional compensation when a film is presented. We will have to think about it. In general, we always maintain that creators should be paid not only for creating, but also in proportion to the use of their work. The proposal put forward calls for additional compensation depending on use. The community of creators shares this view and considers it important.

[*English*]

Mr. Lloyd Longfield: Right. What is the focus on creators?

[*Translation*]

Mr. Mathieu Plante: This is called being connected to the economic life of a work: if a film or television show is very successful, it should be possible to be connected with it and to benefit from that.

[*English*]

Mr. Lloyd Longfield: I'm sorry, we've run out of time.

The Chair: I'm sure you would be able to get back to him. We're out of time on that one.

We're going to move to Mr. Lloyd.

You have seven minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses for being here today. We've spent many hours poring over this thing, and now that we're back from the summer, it's good to get a refresher on the issues here.

My first line of questioning will be for you, Monsieur Payette. You may have heard recently that the artist Bryan Adams spoke in front of the heritage committee, where he made a recommendation related to something called the reversionary right that musicians have. In Canada, you have a reversionary right 25 years after your death, and in the United States, your reversionary right is 35 years, and it doesn't have to be after your death. It can be within your lifetime.

I was hoping you would have a comment on that testimony and what the perspective of your stakeholders would be.

Mr. Jérôme Payette: I don't think it would be necessary to be in the law. The composers don't have to sign an assignment of rights to work with a music publisher, and they don't even need to work with a music publisher because some people do their own business by themselves.

There's nothing in the law that stops what we're discussing being effective in a contract. You could say that after 35 years the copyright would go back to the composer. That's already possible to do if we wish to do it, and i think there's a difference between the ownership and the remuneration. I think what's important for copyright owners is the remuneration side, and that's what we should focus on. How much value can we give to copyright and how much money can we bring to the music industry?

I'll end by saying that music publishers have catalogues of copyright that bring in steady streams of revenue, which are used to reinvest in new talent. We have to keep that in mind. That's the business model of music publishers.

● (1610)

Mr. Dane Lloyd: I'm not sure if you're familiar with Mr. Adams' statement that he made at the heritage committee, but you're saying that there is no firm reversionary right in Canada, that it's a pretty open-ended free market system. You can give away your rights for as long or as short a time as you like, and it's all negotiation.

Mr. Jérôme Payette: Yes, you can do whatever you want.

Mr. Dane Lloyd: Okay, that will be very interesting for us to look into further.

You also alluded to recent European rules related to content filters. Can you elaborate on how that impacts you as an industry?

Mr. Jérôme Payette: I was not referring to content filters but what they have done in Europe, especially concerning article 13. They said that it's a communication to the public even if the work has been uploaded by a user.

Right now, if I put something online, it's protected. If it's user-generated content, the platform doesn't need to pay and they don't need to have a licence. So the change is that they will need to have a licence and to pay the right holders, even for user-generated content, and they will have to be more transparent. Those companies are not transparent about what's being used, and it's the content of the right holders and the creators that's there, and we don't know what's happening with it.

Mr. Dane Lloyd: Do you think it would increase transparency if we were to adopt a European-style model?

Mr. Jérôme Payette: Yes, exactly, and there would be higher rates for the whole music industry, all the content online, and I think that's what they're going after in Europe, making YouTube and others pay more to right holders.

Mr. Dane Lloyd: Thank you.

My next line of questioning is for you, Mr. Tacit. There was a recent Supreme Court case related to ISP cost recovery, and I was hoping that you could elaborate on the impacts of the Supreme Court case on your stakeholders and your views going forward.

Mr. Christian Tacit: Our views are that, if ISPs are compelled by law to provide certain services to assist in enforcing copyright or identifying copyright infringement, they should be compensated for that fairly.

The reality is that ISPs are the telephone companies of the present world. Their role is to carry content, not to question it or examine it, and I don't think in a democratic society we want to deviate from that very much. If they're compelled to basically try to perform a state function, then the state should compensate them for that, or there should be some mechanism, maybe not through the state, but through the parties who have a personal, private or commercial interest in enforcing their rights to compensate them.

Mr. Dane Lloyd: What do you estimate the cost is to an ISP to perform these functions?

Mr. Christian Tacit: That can vary widely. You have large ISPs that have automation tools and you have mom-and-pop shops that do things very manually, so the costs can be all over. I'm not in a position to tell you that. There were some studies done previous to the notice and notice regime that tried to put a handle on the cost, at least at that particular time period.

We haven't delved into that issue very much in the last few years because it was taken off the table when the government made the choice not to compensate ISPs for processing notices. Given that no regulation was passed authorizing a fee and at that time the law was stable and the notice and notice regime was stable, we didn't, at least as an association, keep delving into that, but there's probably data out there, and we could follow up with you if you're interested.

Mr. Dane Lloyd: Do you view new technology as bringing down that transaction cost? Do you think there's a lot of potential to basically minimize the costs to ISPs?

Mr. Christian Tacit: New technology brings down the costs of everything we do.

Mr. Dane Lloyd: Would your opposition to this then, if the costs were to be brought down significantly, also go down?

Mr. Christian Tacit: The cost is what the cost is. Whether it's 10 bucks, 100 bucks or a dollar, I don't think the principle of cost recovery is any different.

Again, if you're being compelled to do something that ultimately is determining rights between private parties, enforcing rights, even if they're statutory rights, you should be compensated for that.

● (1615)

Mr. Dane Lloyd: Thank you.

The Chair: Thank you very much.

We're going to move to Mr. Masse.

You have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chairman.

Thank you to our witnesses for being here today.

There's the European movement that we saw last week, but also yesterday the Music Modernization Act was passed in the United States, a bipartisan agreement that 80 senators signed on to.

There are those who have the theory that there is more collaboration than ever before, because some of the providers like Google, Amazon and Apple are actually moving towards production. There's more of an interest from them in terms of protection of original content because their investments are now kind of going in that direction.

The first question for the panel is on where Canada stands with regard to this. We have the European decision and we have the American decision. How do we fit into this puzzle, especially from the perspective of your organization, with international and North American connections in this? Where do you feel that you fit within the complex changes that are taking place in Europe and the United States? If you're not familiar with the United States' particulars, will that change your perspective here at the table once you actually understand that decision that was made for music copyright yesterday in Washington?

Mr. Jérôme Payette: I think Canada is lagging behind in many ways. The term of protection is 50 years everywhere. It's 70 years in the OECD countries, the U.S. and Europe. Piracy is the weakest thing. Notice and notice is the weakest we can imagine. We need, at least, notice and take down.

The rate setting for now is a good system but it's not efficient. I think we need to have a proper fix of the Copyright Act.

Mr. Brian Masse: Does anybody else want to comment on that?

Mr. Christian Tacit: Could I comment on the notice and notice versus notice and take down?

Mr. Brian Masse: Yes. I'm looking for an international perspective from your organization, because you're not an island into Canada in terms of what's taking place with regard to remuneration decisions about copyright and so forth.

Our European partners and also the American influence coming over here are going to have a direct correlation with your ability to actually do the work here in Canada. I'm looking for any type of input on this. Those are dramatic changes that have just taken place. They were part of our trade agreements and they were discussed privately. Some components right now are with NAFTA and some are with another trade deal.

I'm kind of curious about these moving parts. We're examining it very much in a navel-gazing way here with regard to copyright, through this process and five-year review of our legislation. The reality is that the world has already moved on from where we've had our legislation passed and even where we started the study.

If you have anything, I'm interested in hearing it.

Mr. Christian Tacit: I want to address a specific comment. The point I made earlier was that ISPs are common carriers. They're supposed to be transmitting data. To start engaging them to fight infringement more proactively means you are now asking ISPs to inject their own economic self-interest of avoiding liability into the mix of carrying traffic. That to me is a very dangerous proposition in a free and democratic society.

Beyond the cost that ISPs bear, even if they could be compensated for that, I just think it's a very slippery slope. That's why we object to all of the types of measures from the coalition on up to notice and take down. It's not just about ISPs' interests. It's about broader democratic values for the country.

Mr. Michael Paris: I know I said I was only going to talk about one issue, but I can respond to this just a little bit.

MTAC is a member of the FairPlay coalition, and we do support that initiative quite strongly. On the proposal, as I understand it, the comment earlier was that the Copyright Act currently provides an injunctive remedy for those seeking to respond to infringement. It won't surprise any of the lawyers in the room if I say the phrase, "There is no right without a remedy". Injunctive relief is not a practical remedy. You don't need to look any further than to find out how many injunctions have actually been granted in connection with the Copyright Act to know that. This is why the FairPlay coalition is proposing a separate body to deal with exactly these kinds of requests.

I don't propose to speak on behalf of the ISPs on what the compliance burden might be to deal with orders to restrict access to certain infringing content as identified by that body. That's a little outside my ballpark, but we've been down this road for 20 years talking about how to effectively respond to infringement. I think a review of the act and a serious long look at what the FairPlay coalition is proposing is certainly worth doing.

I'm sorry I can't contextualize that further in terms of the U.S. development yesterday, but I do note that this exact same system exists in the United Kingdom and in other places. That's something this committee should look to.

● (1620)

[*Translation*]

Ms. Stéphanie Hénault: You asked how our organization reacted to the directive from the European Parliament. We were delighted. Actually, the whole world is delighted with the directive which was passed by a very large majority in the European Parliament on September 12.

We think this is a sound model that should inspire you because it would support our economy and our culture. Creators' revenues have fallen, even though the use of their works has multiplied and expanded. It is time to find a way for Canadian creators and Canada's cultural industry to recover the money that leaves the country and does not come back.

For example, the directive calls on content sharing service providers such as YouTube to conclude fair and appropriate contract licences with rights holders. That is something we should draw inspiration from.

Unfortunately, I am not aware of what you mentioned in the United States, but we will look into it. Perhaps we can provide further information in the brief we will be submitting to you.

The Chair: Thank you very much.

[*English*]

I'm sorry, we have to move on.

Mr. Graham, you have seven minutes.

[*Translation*]

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you, Mr. Chair.

Mr. Payette and Ms. Hénault, I will start with you.

Are there other examples of goods, products or some other kind of property where the duration of rights extends beyond the owner's life?

I have heard twice that copyright should be extended from life plus 50 to life plus 70 years. Are there other situations in which economic rights are retained after death?

Mr. Jérôme Payette: Property rights exist for just about everything we own. After death, ownership is transferred to one's children. If I buy a house, it is passed on to my children when I die. So property rights do not end after a certain date. That is my answer to your question.

Mr. David de Burgh Graham: That answers my question. So the asset is transferred to the children or to someone else. It is no longer the person's property 70 years after their death. So why are you making this request?

Mr. Jérôme Payette: It is the same thing, actually. The duration of protection is usually transferred to the children. I think that, in the Bern Convention, the idea of protection for 70 years, or for two generations of descendants, was to protect the work created. That is the idea behind the 70 years of protection.

Mr. David de Burgh Graham: Extending protection to life plus 70 years would cover roughly four generations. What is the justification for requesting more than life plus 50 years of protection?

Mr. Jérôme Payette: It also generates revenues for companies. It is not just individuals who can hold copyright. Music publishing companies, for instance, can control copyright.

Property does not have an end date, generally speaking. It seems strange that copyright does.

Mr. David de Burgh Graham: Yes, but a company does not die.

Ms. Stéphanie Hénault: I would like to clarify something.

Let's say for example that I am a grandmother and I have created something. Seventy years is my grandchild's life expectancy. It is like saying that your house will only belong to you for two generations and, after that, anyone can live there. There is a limit.

From what we know, all countries are extending the duration of protection. The fact that the limit in Canada is 50 years leads to a loss of revenues. When Canadian works are disseminated in other countries that have 70 years of protection, the money collected by copyright collectives stays in those countries. It does not come back here because the law of the country of origin applies.

From our understanding, it is not commercially beneficial to refuse to extend this protection to 70 years.

● (1625)

Mr. David de Burgh Graham: Mr. Payette, you mentioned earlier charging $3 to people who buy devices such as iPhones.

That brings us back to the same debate we had 25 or 30 years ago regarding compact disks. In making this request, are you assuming that all users are pirates?

Mr. Jérôme Payette: No, we do not assume anything of the sort.

Mr. David de Burgh Graham: Why not include those fees in the purchase price rather than charging them when the device is purchased?

For example, if I have 128 gigabytes on my device but do not listen to music on it, why should I pay for it?

Mr. Jérôme Payette: We are suggesting that these royalties be charged at the time of purchase. That is the system in Europe and it is very widespread. Here is a list of countries: Germany, Austria, Belgium, Croatia, France, Hungary, Italy, the Netherlands, Portugal and Switzerland have all adopted private copy regimes. There are royalties.

It is the same principle as for CDs, and we want this to continue. I think that was the intent in 1997. Perhaps the act was not drafted to be technologically neutral, but it should have been.

Mr. David de Burgh Graham: We were talking earlier about what is commonly known as the notice and take down system. Can that be justified without an order from a judge or a court?

Mr. Jérôme Payette: I do not know the details of how the system works. I can tell you though that the current system does not work. Several countries have adopted enhanced content protection measures, whether a notice and take down or a notice and stay down system.

Let me also say in answer to your question that if our copyright system is weaker than that of the countries around us that we compete with, whether in Europe or the United States, that hurts us. It means lower independent revenues for creative industries. It is really a detriment not to operate the same way as the countries around us.

[*English*]

Mr. David de Burgh Graham: Mr. Tacit, you mentioned that you'd like a system of notice and notice to have limits, for example, on how many times you get a notice for the same IP address and the same offence.

How many notices are your members getting for offences? Are they practically DDoSing you on these messages?

Mr. Christian Tacit: Mr. Copeland is well placed to answer that because he deals with this in our firm.

Mr. Christopher Copeland (Counsel, Canadian Network Operators Consortium Inc.): It all depends of the scale of the ISP and the number of end-users they have. That can range from a few hundred to multiple thousands and to the tens of thousands and beyond. It's directly proportionate to the number of users they have. The more users they have, the more likely it is that some users may be involved in infringing activities and that drives the volume of notices they might expect.

Mr. David de Burgh Graham: Can you enforce any kind of notice and take down system or filtering without violating that neutrality?

Mr. Christian Tacit: I don't think so.

That's the concern. Without court supervision there is a serious risk of eroding democratic values of free speech and expression, and freedom of expression. The reason we have court safeguards is that the courts are the ultimate protectors of our Constitution and our democratic values. To do anything other than that isn't necessary. I also want to make the point that the notice and notice regime isn't just this tool that's out there that nobody cares about. We in our practice see follow-up from content owners who, when they see multiple infringements from the IP address, will start court cases to get the information on who the users are and will pursue them. Those people are in Canada and they can be sued for statutory damages and effective injunctions can be levied against them for infringement. There's no reason those remedies aren't available.

The other thing is, although there is a safe harbour for ISPs, they're also subject to the peril that if they are deliberately and repeatedly engaged in those sorts of activities, under subsection 27 (2.3) of the Copyright Act safe harbour doesn't apply. We don't need to go very far and compromise our values to deal with this problem.

Mr. David de Burgh Graham: I have only about five seconds left, and I want to make one very quick request.

You mentioned you're getting notices that have things that are beyond the scope of the statute. Is it possible for you to share with us, at a later date, examples of these letters that are sent to your users that vastly exceed the elements prescribed by statute?

Mr. Christian Tacit: We could provide some redacted materials.

Mr. David de Burgh Graham: Thank you. I appreciate that.

The Chair: If you can send them to the clerk, that would be great. Thank you.

Mr. Albas, you have five minutes.

Mr. Dan Albas: Thank you, Mr. Chair.

I want thank all of our witnesses for being here today. It's a fascinating subject, and I appreciate you all sharing your points of view.

I would like to start first with Mr. Tacit.

In your opening statement, you talked about vertical integration. There are a number of us who are familiar with the term, but specifically, what types of ISPs are you referring to?

● (1630)

Mr. Christian Tacit: The ones that are the biggest and have the most resources and are championing the FairPlay coalition are Bell, Rogers, Shaw, Vidéotron and so on.

Mr. Dan Albas: So the ones that have plays in both media creation, distribution, and content—

Mr. Christian Tacit: That's right, either directly or through affiliates.

Mr. Dan Albas: Now you said there are a few different options. If such a program were to be put in place, such as FairPlay has suggested, there would be costs. You said that the state could possibly pay for it, which means the Canadian taxpayer or a certain subset.

Again, there's some proportionality, because obviously in some areas ISPs are much smaller and service very niche markets, particularly in rural areas, and the proportionality would certainly impact them more. Is that correct?

Mr. Christian Tacit: It depends more on how big their scale is and what sort of technology measure is being required of them.

For example, you order an ISP to use deep packet inspection, which is a form of inspecting the headers on packets of traffic that tells you a lot about the type of traffic being carried. If that's used as a method of trying to detect infringing traffic—and we won't talk about the merits of how accurate it is or isn't, but let's assume it is—those DPI boxes can easily cost $100,000 each. For a small ISP, you could literally put an ISP that's comprised of two to four employees out of business by requiring them to do this.

Mr. Dan Albas: Especially in rural areas, where there's a smaller network—

Mr. Christian Tacit: Wherever they are.

Mr. Dan Albas: —or a very expensive network to service.

Mr. Christian Tacit: Sure.

Mr. Dan Albas: Then, of course, the other alternative is to have the media companies that are asking for these takedowns to happen to do it, and then it would be all on their customers. Is that correct?

Mr. Christian Tacit: That's right.

Mr. Dan Albas: Inevitably, if we go down this path, there will be increased costs to consumers or to Canadian citizens, or some subset of either.

Mr. Christian Tacit: Somebody should pay other than the person, the innocent party, who's being required to do the job.

Mr. Dan Albas: Now in regard to some of these automatic tools, my colleague Mr. Lloyd had mentioned that new technology comes across....

I know a lot of younger people, and probably some older people, play video games that have music in the background. They generate their own content to share with other people for different games or whatnot. That kind of music being played in the background could trigger one of those automatic takedowns if that technology was.... Because there are protections for satire, for individual sharing and whatnot.

Those things could be put at risk as well, could they not?

Mr. Christian Tacit: Potentially, yes, because the packet inspection, and making decisions on blocking based on that, doesn't provide you with any information about the context in which those packets are being transmitted. You're quite right that some of them may be authorized and some of them may not be.

Mr. Dan Albas: You mentioned earlier that if we were to put in place that kind of system, ultimately ISPs would have to look at things in terms of their economic interest rather than other values.

Can you give an example where an ISP might have to make that decision? Again, we're asking to basically regulate the conduct of others. What I may suspect might be exploitive to some, other people would say, "No, that's generated content. That's their content."

Could you maybe give us a few examples of how those two compare?

Mr. Christian Tacit: If in the carriage of content, the issue has come up....

By the way, there are already provisions now that, again, don't allow ISPs and other Internet service ecosystem participants to take advantage of safe harbour if there's a court order that says something is infringing and they're ignoring it. Then it's pretty clear that if they are participating, they shouldn't be.

However, in a situation where there's no legal determination to say to somebody, "I think they're knowingly doing this and now I'm going to block their traffic", that's putting a common carrier in the role of a judge of what should be carried down its pipes. That's why I'm saying that's a very.... If I were an ISP, I would tend to be conservative, and if the penalty is very large—let's say I'm opening myself up to very high statutory damages—I may be more tempted to take the risk of having the party sue me for getting it wrong, because it's a smaller amount of damages than to have to pay the large statutory damages, particularly for recurring offences, where every day is considered a new offence or whatever. I may now start meddling in that traffic because I'm worried about my liability.

We don't want common carriers to be in that situation.

● (1635)

The Chair: Thank you very much.

We're going to move to Mr. Baylis.

You have five minutes.

[*Translation*]

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Mr. Chair.

I will begin with Mr. Payette.

You talked about a change in the law in Europe. From my understanding, this change will make it possible for copyright collectives to negotiate or take legal action.

Please tell us more about that.

Mr. Jérôme Payette: Yes, of course.

This change strengthens the power of copyright collectives and enables them to enter into agreements for all content available online. At present, users put content online, and we all agree that they should be able to do that. What will change is that platforms will have to pay for user-generated content. So YouTube will have to pay for the content users put online.

Mr. Frank Baylis: It will be negotiated.

Mr. Jérôme Payette: Yes.

Mr. Frank Baylis: Is it a right to negotiate or a requirement to negotiate?

Mr. Jérôme Payette: Since it is known that there is public communication, even for user-generated content, there is a right to be respected. So the platforms have no choice but to negotiate with copyright collectives.

Mr. Frank Baylis: So it will be negotiated by the copyright collectives. Actually, it would be practically impossible to negotiate with every user. For instance, if I created a little song and put in on YouTube, I could probably not negotiate such an agreement.

Mr. Jérôme Payette: It would be the copyright collectives that would be negotiating.

Mr. Frank Baylis: Does the law stipulate that it is the copyright collectives that negotiate?

Mr. Jérôme Payette: I think it is mentioned in the legislation adopted in Europe.

In any case, there are already certain agreements in place. For instance, YouTube has concluded agreements with SOCAN, but only for the part that is monetized through advertising. When protected content is not used in advertising, rights holders do not receive any revenue. You have to remember that YouTube benefits from this all the same because it retains data, attracts users, and organizes content. It does all kinds of things, but pays nothing for the content.

Mr. Frank Baylis: So if YouTube wants to post a series of songs that are protected or whose rights are managed by a copyright collective, YouTube has to pay the collective or enter into negotiations with a view to determining an amount to be paid.

Mr. Jérôme Payette: That's right. In Canada, those negotiations are usually validated by the Copyright Board.

Mr. Frank Baylis: In order to determine the value of the content.

Mr. Jérôme Payette: That's right.

Mr. Frank Baylis: Okay.

Would you like to add something, Ms. Hénault?

Ms. Stéphanie Hénault: I agree with what Mr. Payette said. That is also my understanding.

Mr. Frank Baylis: Would that also apply to screenwriters?

Ms. Stéphanie Hénault: Yes, because screenwriters in Europe and Canada collect royalties from certain presenters. In Quebec, that is done by SACD, a European copyright collective that also has an office in Montreal. Our screenwriters receive royalties from certain presenters through SACD. When our screenwriters' works are presented in Europe, we are very pleased with the European directive, but we have to address the gap between the European system and the Canadian system.

Mr. Frank Baylis: Very good, thank you.

[*English*]

Mr. Paris, I'd like to then go to you to understand a bit more about this sound recording. You're making the argument opposite to what the musicians are making. You're saying they're double-dipping.

What are they asking for that you don't want to give? Let me ask you that way.

Mr. Michael Paris: They're asking to remove from the definition of "sound recording" the exception for film soundtracks where they accompany a film. The sound recording is different from a song in the sense that a sound recording is exactly what I've suggested to you. The sound of an explosion or anything that you might find on the audio track of a film is a sound recording. What the definition of sound recording does, for section 19, where it operates the way I'm describing, is that it provides a stream of royalties where a sound recording that is not on a film soundtrack accompanying the film.... It's only where it accompanies the film that this exception operates. If the film soundtrack is played on the radio, for example, neighbouring rights exist and royalties flow.

What they want to do is remove that exception, which is to say, any time a film would be played in a theatre, it would trigger royalties for everything from a sound effect to a song. That is what we object to.

● (1640)

Mr. Frank Baylis: Is your concern the song or the sound effect? They're two different things. If you had to pay for every sound effect, it would be impossible. Let's say someone creates a beautiful song, and it's used in a movie. Do you want to pay up front but not pay ongoing royalties? Is that what you mean?

Mr. Michael Paris: That's currently the balance that is struck.

Mr. Frank Baylis: That's what it is right now.

Mr. Michael Paris: That is what it is right now.

It's also the same, for example, for a dancer who choreographs a routine. For that person, the approach in the law to date has been that you can charge the rental rate up front, but you're not permitted to exercise the remuneration in the act when it's incorporated into a film. It's a recognition of the fact that a film is a unitary work. That's what we object to. What we object to is the exhibitors' paying the royalty rate for every single song, sound effect, or dance performance, should it extend to that, that is incorporated into a film. That's what we object to.

The Chair: We'll go back to Mr. Albas for five minutes.

Mr. Dan Albas: Thank you. I'm going to be sharing my time, hopefully, with Mr. Lloyd.

I'm going to follow up from my colleague Mr. Baylis.

Mr. Paris, in regard to this subject, obviously, some films that were filmed close to 100 years ago are sometimes remastered and now are available, reformatted for smaller screens like phones, etc. I just wonder how you could have someone receive royalties for streaming, at least with your business, where you have exhibitors. They actually say, "I'm going to charge x amount at the door, and this is how many people saw it, so I can pay on a per basis" but for something that ends up being used in a whole bunch of different ways, essentially, what is being asked here is for the royalties to be paid every time a show is streamed or is shown online.

I watched *Mr. Smith Goes to Washington* on Google. I think they do that as a free service. Hopefully, Mr. Tacit won't have to take it down now. Perhaps you could just explain what some of those costs would work out to be for different platforms, such as exhibitors versus streaming.

Mr. Michael Paris: Sure. The section I'm referring to here, just for reference, is section 19. You're going to test my memory here, but the section, as I recall, refers to any sort of public communication or communication of the work by telecommunication. I don't act for a streaming service and I'm not a copyright lawyer by trade, but my understanding is that it would apply to streaming.

In the hypothetical case you're talking about, with *Mr. Smith Goes to Washington*, which is a historical work, what would happen on the exhibitor's side is that we would pay a fee from the distributor who holds the rights to that film. We would kick up to that person a portion of the film rent from each per-ticket sale. That would be a public performance, when you walk into the cinema and you see it.

If you were to remove the exemption that entitles stakeholders to neighbouring rights or a royalty stream from a public performance or telecommunication of that work, our rights go beyond an obligation to the distributor and we would end up paying a royalty to, I believe, the maker or the performer of the recording that's incorporated into that film.

Our point is that the balance that's been struck in the act to date is that once you sell your rights to include your work in a film, you're prohibited, on the back end, from also assuming neighbouring rights, which are designed to provide compensation where the public communication of that work is out of your control. Think of performance on a radio station, something like that. The record label isn't involved, obviously, in granting permission every time a song is played on the radio. Neighbouring rights exist to provide a flow of royalties from that uncontrolled, perhaps unintended, use of that work, whereas in film the inclusion of a song, a dance performance, an acting monologue, whatever it is, is very intentionally included, negotiated, and compensated up front.

Putting the burden on exhibitors to pay again, we suggest, upends the balance that has served the film industry so well to date.

Mr. Dane Lloyd: I'll quickly take over. I'll also keep on this line of questioning. How many people are currently employed by the people you represent, approximately?

Mr. Michael Paris: I can speak to Cineplex. We're talking of tens of thousands.

Mr. Dane Lloyd: With that, if we go with the recommendations to include the sound royalty, there's the double-dipping you're talking about. Does that put you at a significant competitive disadvantage to Netflix, Prime Video and those companies?

● (1645)

Mr. Michael Paris: Yes, of course, and that's a great question. We have a number of competitive disadvantages, not the least of which is that Netflix doesn't pay tax here, so there's that. There is the other added cost that Netflix doesn't necessarily pay film classification fees, all the costs that go with operating a bricks-and-mortar business that streaming services don't bear. In this particular circumstance, with a royalty such as this, I suppose it would apply to exhibitors and streaming services equally—if I'm right about that—so it is one layer of additional cost. It's one thing for the large chains to deal with that cost. It's quite another thing for independent cinemas.

I'll go back to what my colleague said about ISPs. If you're running a single-screen cinema—

Mr. Dane Lloyd: But it will kill jobs in your industry.

Mr. Michael Paris: Yes, it absolutely will kill jobs—and cinemas.

The Chair: Thank you very much.

We're going to Ms. Caesar-Chavannes. You have five minutes.

Mrs. Celina Caesar-Chavannes (Whitby, Lib.): Thank you. I'll be splitting my time with Mr. Lametti.

Thank you for coming.

Mr. Paris, to continue the line of questioning from Mr. Lloyd, what are the implications to having these royalties paid, for the recordings or the tracks, once they're in the exhibitor's possession or are being played there? What are the implications further to the other components of the film? If we start off by saying that these royalties need to be paid—you mentioned choreography, you mentioned other components—and go down this road, what are the implications of that to the exhibitors and, beyond that, to many of these organizations, some of which are mom-and-pop shops, some of which are single-screen cinemas? What are the implications beyond that?

Mr. Michael Paris: To give you a really short response, this would be an additional operating cost, a higher operating cost. I'm not in a position right now to tell you or quantify what that would be. We're responding to the proposal as it is now.

In terms of talking about what it would be for other collectives, I can only tell you that the proposal I'm speaking about today arises from the music industry. It doesn't come from those other things. But once you start treating one class of creators differently, it's obviously going to follow on. I'm forecasting a little bit here. The implications of higher operating costs will depend upon the business position of the chain or the individual cinema operator.

I can tell you very generally—one of the honourable members alluded to it earlier, and I'm sure everyone will be unanimous here—that the creative economy is undergoing a great deal of disruption. The study from Telefilm noted that exhibitors are competing with streaming services, but we also compete, I would say, with every other form of out-of-home entertainment that exists: sporting events, concerts, museums, anything on your phone. When you add additional operating costs, that's money that those independent cinema operators cannot invest into the cinema itself, including the theatre, technology, hiring young people for their first jobs, and on and on down the line.

The Chair: Mr. Lametti, you have two and half minutes.

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): I think what you're all asking us to do is to look at the initial positions between copyright and contract in the sense that you're asking us to say whether the writer should be paid up front in a contract or get additional copyright royalties later.

[*Translation*]

The same applies for joint ownership, which Mr. Plante and Ms. Hénault just talked about. For our part, we have to determine whether the author should be paid just once, in advance, under a contract, or later on, through copyright royalties.

Mr. Payette, I am surprised that you do not have an opinion on what Mr. Adams recommended yesterday. Subsection 14.1 of the Copyright Act currently provides a reversionary right for authors for 25 years after their death. What Mr. Adams called for yesterday is that this be the case for 25 years after the creation of work.

It is very important for you to state your position on this, don't you think?

Mr. Jérôme Payette: If I may, let me state my position. I think it is 25 years after the author's death—

Mr. David Lametti: That is what the act currently provides.

Mr. Jérôme Payette: Yes. He is calling for copyright to revert after 35 years, but, as I said, that can be negotiated under a contract.

Mr. David Lametti: Yes, but that changes the basic position, the initial power, doesn't it?

Mr. Jérôme Payette: Yes, of course. My position is clear: I do not think that should be included in the act. If Mr. Adams had wanted to recover copyright after 35 years, he could have done so in a number of ways. He could for instance have negotiated that from the outset or decided not to deal with a publisher. There were a number of avenues available to him.

I do not think that is the real issue in the review of the act. It is more a question of determining how revenues can be collected for authors and creators.

● (1650)

Mr. David Lametti: That is exactly what Mr. Adams suggested, namely, that authors have to be given greater powers from the outset, specifically a reversionary right after 25 years.

Mr. Jérôme Payette: That's right.

[*English*]

The Chair: Thank you very much.

Mr. Masse, you have two minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

Mr. Paris, just to get a summary in terms of the costs you'd be incurring—you can't quantify it, from the suggestion—what would be the administrative elements to it? Perhaps you could quantify that. I know you can't put a price on it. Regardless of where the money goes, I'm just curious about the processing or whether that's not really a factor in all of this.

Mr. Michael Paris: In the material file by Music Canada, I think they estimated the cost of these additional royalties to both broadcasters and exhibitors would be somewhere in the order of $45 million. There's no citation provided for that number. I don't know if it's greater or less than, but that's where they ballpark it.

In terms of how it would be administered, I expect you would probably have to have a Copyright Board tariff that would be negotiated and paid. I don't know if I can speak to you on the nuts and bolts as to how that would be administered. I can tell you that I would expect them to organize it in the same way other collectives enforce or govern their mandates.

Mr. Brian Masse: Would it be fair to say there is or is not an easy way to piggyback that new proposal on current infrastructure in terms of administration, or is that something that would require a new model?

Mr. Michael Paris: I don't know if I can comment on the administrative burden.

Mr. Jérôme Payette: May I comment? Actually, cinemas are already paying rights holders. They have deals with SOCAN. Tariff 6 says that cinemas have to pay a $1.50 per seat a year to SOCAN for collection and administration. My understanding for sound recordings is that it would be the other side. It would be the song and the recording of the song for which they would have to pay a collective management society like Re:Sound, for example.

Mr. Michael Paris: As I said, it's not news to anybody that we pay tariffs to certain collectives. I'm saying that I expect it would be organized in a very similar way, but it really would depend on which collective we're dealing with and what is actually being asked of us. In this particular circumstance, of a sound recording, I'm guessing it would be a collective other than SOCAN and perhaps multiple collectives. I'm guessing it would be administered in the same way, like Re:Sound.

The Chair: Thank you very much.

Mr. Brian Masse: Thank you.

The Chair: That takes us to the end of this round. We have enough time to do a second round of three seven-minute questions.

We're going to go back to Mr. Jowhari.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair. Thank you to the witnesses. I'll be sharing my time with Mr. Baylis.

I have one question and that goes to Mr. Payette.

I'm going to share some statistics with you. This is a concern that I have regarding the statistic that I looked at. It has to do with the decrease in the median income of the musicians and singers. The statistic that I was looking at indicates that between 2010 and 2015, the revenue of Canadian music publishers increased from $148.3 million to about $282 million. Over the same period, the median income of an individual working full time in the Canadian music industry increased as well. Those occupations include producers, directors, choreographers, conductors, composers or engineers.

However, the median income of musicians and singers saw a decrease of about $800 between 2010 and 2015. Can you share your thoughts with me as to why that is ?

Mr. Jérôme Payette: There are different roles for authors, composers or performers. Music publishers represent the songwriters. If the music publishers make more money, the songwriters also make more money. However, in the global picture, there may have been fewer shows or the individual songwriters have made less money because there are more songwriters. The main problem is that the new digital environment pays less than the traditional environment. For individual writers, composers and musicians, this is very....

● (1655)

Mr. Majid Jowhari: Are there any amendments in the Copyright Act that you think will improve the income situation of the musicians and singers?

Mr. Jérôme Payette: Of course, having more money coming from YouTube or other online services would make life easier for musicians and composers.

Mr. Majid Jowhari: Okay. Thank you.

[*Translation*]

Mr. Frank Baylis: Ms. Hénault, you talked about screenwriters and directors becoming joint copyright holders. I would like to understand why.

Do you expect to receive more money or would you simply like to have that right? Can you explain the rationale behind this?

Ms. Stéphanie Hénault: In terms of the royalties collected by copyright collective here and elsewhere, we are penalized in Canada because the presumption of joint copyright is not included in the Copyright Act. This weakens the ability of SAID in particular to collect directors' royalties outside the country.

We would like you to spell that out in the act. This is not revolutionary; it is consistent with case law. We are asking for this presumption to be included in the act.

We have described the work of the screenwriter and director of an audiovisual work. It is crystal clear that they are the primary owners of the audiovisual work. We would like this clarification added to give copyright collectives some leverage in collecting royalties for Canadians for works presented in other countries that have private copy regimes for audiovisual works. In some countries, in Europe for instance, there are colleges where producers, actors, and authors all collect royalties for private copies. That also includes directors.

Mr. Frank Baylis: In this example, producers are also included. I have trouble telling a producer, who makes a lot of decisions in creating a film, that he is not an author.

Ms. Stéphanie Hénault: The producer is not an author. The producer hires actors and creators, but does not create anything. He administers a production. He obtains permits to produce and present the film. He shares his revenues with screenwriters. Under our collective agreements, if an author has written the entire script for a television series, he negotiates a contract for the script. If there are revenues, he will receive some royalties. This is fundamental. If it is not recognized in Canada that, in addition to being paid for the work, individuals can be compensated for the work's success, no creators would be interested in doing the work.

Mr. Frank Baylis: Okay, thank you.

[English]

Mr. Lloyd Longfield: Thanks for sharing your time, Mr. Baylis.

I think Mr. Masse was really onto one of the crux es that I see as the concern: new deals being made in Europe and in the United States. We easily could have a creative drain from Canada going into markets where you can actually get paid for creating products and creating works.

The market in Canada isn't working. We have money being made, but it's not being made by musicians. It's not being made by creators. I think we need to look at this really carefully and maybe even accelerate our study to come up with some conclusions so that we can protect the creative class in Canada. We're creating middle-class jobs though this, but now we have either impoverished people or people who are very successful in the industry. There's nothing in between. The market isn't working.

Can I have just a quick comment back from any of you on whether it's the publishers making money and digital servers making money...? The digital companies are making a lot of money and performers are not sharing in the benefit. Where can we go with our study to try to drill into that a bit further?

Mr. Jérôme Payette: For example, music publishers share either 50% or 75%—or any other, but generally it's between 50% and 75% —of the revenues directly to the authors. Of course, they work for the authors. That's what they do. It's normal that they get paid. The problem is that there's not enough money getting into the system. It's not retained, because the digital companies make a lot of money using content. That's the problem. You're right. If we don't get enough copyright protection in Canada, we're at a disadvantage with our other partners.

● (1700)

The Chair: Thank you very much.

Mr. Albas, you have seven minutes.

Mr. Dan Albas: Thank you, Mr. Chair.

Thank you for all of the testimony here today.

One of the concerns I do have...and there are a lot. There are concerns that musicians aren't able to provide for their families and to have their rights respected. That's an important thing. I'm also quite worried about innovation and how people can generate new content. I've heard anecdotal stories about how someone will actually write a song, publish it on YouTube, and because YouTube has years of content that's added every single day, it's impossible for the platform to hire enough people to be able to watch it. I've actually heard about cases in which, because of these filters, it will suddenly say, "Sorry, you're infringing upon someone else's rights" and take it down. That's new, original content. Obviously the technology isn't there yet. If we look at some of the new rules that are being talked about in Europe, I'm worried that some of these may take down content that is legitimate, in which someone is either reviewing a piece or is generating their own content, whether it is music being played for satire or for criticism, etc.

I do see that there's a balance, but I'd like to hear a little bit more about how you deal with a problem like that, where the technology.... Specifically in Europe, where the requirements are much harder, I'm worried that these content rules will require YouTube-like applications to shut down legitimate innovation or legitimate criticism or whatnot.

Mr. Payette.

Mr. Jérôme Payette: I think the greatest threat to the Canadian creative economy is not having enough money getting into the system. YouTube already has a technology called a content ID system to identify the rights holders. They have provisions in Europe to protect smaller businesses or educational use of content online, so it's not threatening the innovation side. They just need to remunerate more the content owners. We need to go forward with this. Europe did look at that.

I need to point out that there has been a lot of misinformation around what happened in Europe. Google spent dozens of millions of dollars on lobbying, and there was a lot of misinformation being sent out. The European members of Parliament did look at that and finally accepted it , with a large majority, after they understood what the new proposed text was really going to do. It was largely adopted. I think it was 429 for and 226 against, or something like that. I think Europe does care about freedom of speech and about innovation, but they also care about the rights holders and the creative industry. That's what has been shown.

Mr. Dan Albas: I'd like to believe that legislators always do the right thing and vote the right way. There is a balance though between trying to establish and continue the rights of the creators with the rights of everyday citizens. Who judges? The thing is, with Google and these automatic filters, we don't know that everyone is getting a fair shake. Some Canadians.... I believe Justin Bieber got his start on YouTube. I hear what you're saying.

On the flip side though, many of these rules in Europe have only come up recently. Is that correct?

Mr. Jérôme Payette: Yes, and I think things are changing and it's time that we change. You mentioned balance. When we look at digital companies and rights holders, according to SOCAN's published numbers, the average songwriter makes $30 a year. That's not enough money. How much does Google or YouTube own? There's a lot of money out there, and it's not going to creators because the balance is not fair.

Mr. Dan Albas: I would say the two models are very different. One is set up to serve the Internet in a different way, and the other one is meant to serve people who like that kind of music.

I'm going to hand it off to Mr. Lloyd for the remaining time.

Mr. Dane Lloyd: My line of questioning is going to be for you as well, Mr. Payette. You seem to be getting the brunt of the questions today.

We talk about competitiveness issues. Right now we're dealing with NAFTA, and we have taxes and regulations. We're always trying to fight to make Canada a better place to invest. We always think about that as traditional industries, but our cultural sector is also a very important and a growing part of our economy.

Is Canada a competitive place to make music? Is it competitive culturally? If it is not, what do you think could be done to make us more competitive?

Then, Mr. Tacit, perhaps you would have some comments on that.

● (1705)

Mr. Jérôme Payette: I think that culturally, yes, we have strong creators and a system that allows culture to be vibrant.

On the copyright side and the remuneration...and we have to understand that copyright is not subsidy. It's private income that's incoming for the exploitation of the work.

This really brings down the competitiveness of Canada: not having enough money coming in from the digital services, or not having strong legislative or other kinds of things to address copyright. The rates of things should be faster. We have to really make changes to follow what's happening in Europe and the United States to be more competitive on the copyright side.

Mr. Dane Lloyd: Who is benefiting from our lack of competitiveness? Who are the chief benefactors of our lack of competitiveness with copyright?

Mr. Jérôme Payette: Those benefiting from weak copyright are the users, and mainly right now the online platforms and digital companies.

Mr. Dane Lloyd: Mr. Tacit, do you have any comment about that? From the perspective of smaller ISPs, are they competitive in Canada? Is it competitive right now?

Mr. Christian Tacit: You don't want to open that debate now. There's not enough time left.

We actually just participated in a Competition Bureau market study and discussed all of the severe anti-competitive problems that exist in Canada for the smaller ISP sector. I don't want to take us off track, but I would be happy to share that with you, or anyone else who wants it. There are significant structural barriers to competition.

Mr. Dane Lloyd: Related to copyright, directly...?

Mr. Christian Tacit: I don't know about that. I think it's related to competition, generally. I don't want to stray into other areas that I know less about and are not my domain.

All I can say is this: If there's any kind of rebalancing that needs to take place in the digital era between streamers and those who provide content on a digital platform or whatever, that's great and fine, and this committee should make those recommendations, because the times are changing. What I don't want to see compromised, because it is a fundamental part of our competitiveness as a nation, is the rule of law. We are very much a country founded on the rule of law, where we take individual rights very seriously. People do come to this country, and have come in droves recently, because of that. Anything we do to weaken that is going to adversely affect our competitiveness adversely.

The Chair: Thank you very much.

Mr. Masse, you have seven minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

I'm tempted, but I'm not going to take the bait. The parliamentary secretary, Mr. Lametti, knows my position on notice and notice, and notice and take down. I don't need my blood pressure to go up at the moment with regard to that.

I do want to make a point though. We have had several interventions about issues on YouTube. I don't want to be seen as picking on something, but I want to at least create an alternative perspective.

It was raised that Justin Bieber got his start on YouTube, but the reality is that YouTube also did very well financially from that relationship. In fact, you go to YouTube right now, and it has a burger on it from a food chain that's advertising on it. They have Fortnite and other things. YouTube has done very well through its relationship with those who have had some success with the platform, by posting your stuff.... In many places it's a public risk, putting some of your stuff up on YouTube. People should think about that.

Where we're at now is that this committee is reviewing a five-year change. We are going to make recommendations to the minister, if we can agree as a committee. That hasn't been decided yet.

That's the extent of what's happening, here. No legislation has been proposed. That would take the minister coming back and, first of all, answering this committee, if he so chooses. There is a statutory time frame for that. There can also be an extension that could run us quite late. Then on top of that, there would have to be perhaps specific instructions to Parliament, if the act would be amended, by tabling in the House of Commons, and it would have to go through a series of legislative processes to eventually get to the Senate and then passed.

There is quite a distance here, and there are different ways to get to that distance.

If you have comments, about what takes place, priorities.... What do you think if say, for example, we do nothing? That could be the end result for the 2019 or 2020. It's a reality that is out there with regard to the current act that's in place. I'd like your thoughts on that, if you have any. I think it needs to be something that's stated, especially given that we've seen what's happening in Europe and the United States, as of yesterday

● (1710)

Mr. Michael Paris: I'll get it out of the way very quickly. On the sole issue that I'm talking about, which is the definition of sound recording, we're quite content and in favour of the committee leaving it undisturbed.

Mr. Brian Masse: That's fair. That's what I'm looking for.

Mr. Christian Tacit: I have one comment. Motion isn't always progress. Just because things are being done, it doesn't mean that they're the right things. As a country, I think we have to figure out what's right for our country to do overall. We have to balance a whole bunch of rights and work within the framework that we have.

[*Translation*]

Mr. Jérôme Payette: As I said, I think the provisions regarding network services should be reviewed.

[*English*]

The Canadian safe harbours need to be looked at because they're very wide and there are different companies operating under the Canadian safe harbours right now. The digital platforms are some of them and Europe has moved on this. That's one.

I think private copying is something important. There was a system that was bringing in $40 million every year, but because the law was not technologically neutral, now we have only a few million remaining. Those are two related points to focus on.

[*Translation*]

Ms. Stéphanie Hénault: To encourage innovation, people have to be compensated. Our most talented screenwriters who write television series, who work from 6 am to 10 pm to create audiovisual works that have very high ratings in French-speaking Canada are increasingly poorly paid, even though their television series are being more widely shown. Things have to change to encourage them to continue their work. Otherwise, in a very short time, screenwriters will no longer want to do this kind of work, and neither will their children when they grow up. In sectors where people are not compensated, the talent will dry up.

As Mr. Payette said, value has been transferred not to our local presenters but to foreign presenters, to the GAFAs that monetize a great deal of cultural content. We have to restore the balance; otherwise there will be no incentive for creativity and cultural innovation, for the economic activity it generates, for the tourists it attracts or for Canadian values.

Culture definitely has an economic component, but it also has to be preserved because it is essential. We have a duty economically speaking to ensure that talented creators stay here and can earn a living from their work.

[*English*]

Mr. Brian Masse: I did make a reference to Fortnite. If there are members of Parliament who aren't familiar with it, please let me know when you're going online, so that I can teach you.

The Chair: On that note, I would like to thank our guests for coming in today and sharing with us their experiences and their knowledge. Obviously, this is a large and complex file. We still have a lot of work ahead of us.

These are good, hard questions because we need to be able to get information out. That's what's going to help us write this report.

As they say in the movie industry, that's a wrap. We're adjourned for the day.

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